IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP 382 OF 2001.

JUDGMENT RESERVED ON 2.3.2008

DECIDED ON 15.3.2007.

Sant Ram …..**Petitioner.**

Versus

Union of India and another …..**Respondents.**

Coram:

Hon'ble Mr. Justice **Dev Darshan Sud, J.**

Whether approved for reporting? ***No***

For the petitioner	**Mr. Vinay Kuthiala, Advocate.**
For respondent No. 1	**Mr. Ravinder Thakur, Central Govt. Counsel.**
For respondent No. 2	**Mr. Rajan Dewan, Addl. A.G.**

Dev Darshan Sud, J.

This writ petition has been preferred by the petitioner claiming Freedom Fighter's Pension under the Swatantarta Sainani Samman Pension Scheme, 1980 (for short, "the Scheme of 1980"). The petitioner has submitted that he

---

Whether the Reporters of the Local Papers may be allowed to see the Judgment? Yes.

moved an application to respondent No. 1 in July, 1996 which was received in its office on 13.8.1996. According to the petitioner, the application was accompanied by the following documents:

"a) Certificate issued by Sh. Thakur Dass Niddar, Freedom Fighter, and his PPO No. is 2020, he has undergone imprisonment for two years.

b) Certificate issued by Sh. Sita Ram, Freedom Fighter, who has undergone imprisonment for more than two years.

c) Certificate issued by Sh. Badri Singh, General Secretary, H.P. Freedom Fighters Union, Distt. Solan.

According to the petitioner, these documents and the admitted fact that he had been declared as Freedom Fighter by the State and sanctioned "Samman Rashi" with effect from 17.6.1995 was sufficient proof of his suffering and the fact that he was a Freedom Fighter. Respondent No. 1 has taken no action on his application and, therefore, the petitioner was constrained to file the present writ petition.

During the pendency of the writ petition, respondent No. 1 asked respondent No. 2 to verify the facts regarding the suffering undergone by the petitioner during

the freedom struggle and to confirm from the official record facts relating to the issuance of arrest warrants against the petitioner and his remaining underground. This, according to respondent No. 1, was necessary and mandatory before any pension could be granted to the petitioner. For this purpose, Deputy Commissioner, Solan was ordered by respondent No. 2 to ascertain as to whether the petitioner had undergone privations in the nature of remaining underground, suffering externment and imprisonment etc.

The case pleaded by the petitioner is that Kunihar was a Princely State before independence and acceded to the Union of India after India attained freedom. According to the petitioner, the rulers of Princely States exercised absolute powers as monarchs and expected unquestionable obedience to their orders / commands. The petitioner has alleged that he was a member of the Praja Mandal Movement which was actively engaged in Satyagraha / agitations demanding the merger of hill states including the State of Kunihar with the Union of India. The active participation of the petitioner in the freedom struggle, infuriated the ruler of Kunihar who issued arrest warrants against him. The petitioner remained underground between 1945 to 1947. According to the petitioner, he suffered

considerable amount of mental and financial distress. He remained underground from 1945 to 1947 and actively participated in the freedom struggle despite arrest warrants having been issued against him by the ruler of Kunihar. Petitioner has claimed suffering on these counts for two years from 1945 to 1947. The annexures filed by the petitioner with the writ petition show that his suffering has been certified by freedom fighters who were contemporaneously participating in the freedom struggle / agitation supporting the Praja Mandal Movement for integration of the Indian States.

During the pendency of the writ petition, communication being letter No. 117/523/SOLAN/HP/96-FF (NZ), dated 11.3.2002 (Annexure PF) was addressed by the Ministry of Home Affairs to the petitioner in which it was stated that according to the provisions of the Scheme of 1980, the petitioner was required to produce primary evidence from the official records of Jail, Court and Police etc. in support of his claimed suffering. It was stated that only in those cases where such record was not available, secondary evidence would be required. The relevant portion of the letter reads as under:

> "2. As per provisions of the S.S.S. Pension Scheme, 1980, you are required to produce primary

> **evidence from the official records of jail, court and police etc. in support of your claimed suffering. Only in those cases where such records are not available, secondary evidences such as Personal Knowledge Certificates (PKCs) or Co-prisoner Certificates (CPCs) from eligible certifiers are accepted. Mere submission of such certificates from eligible certifiers without supporting certificate from the State Govt. that official records of the relevant time are not available with the State Government (including all State agencies), cannot make you entitled for grant of pension."**

The letter states that the State of Himachal Pradesh – respondent No. 2 vide its letter dated 2.8.2001 has forwarded a verification report which states that the personal suffering of the petitioner has not been established in connection with the freedom struggle of the country. By another letter dated 6.1.2001 (Annexure R-3), addressed by the Commissioner-cum-Secretary, General Administration to the Government of Himachal Pradesh to the Under Secretary, Government of India, Ministry of Home Affairs, it has been stated that no record is available with the State Government or any authority which would show that warrant of arrest had actually been issued against the petitioner and that he remained underground. Further, in the absence of the official record, he was not eligible for

the grant of pension. The petitioner's claim has been rejected by this communication.

Respondent No. 1 has submitted that the Scheme of 1980 requires documentary proof to establish the genuineness of the claim of the petitioner. The documents detailed are:

a) Police Station where FIR was lodged and copy of FIR.
b) Record of jurisdictional Court trying criminal cases and whether the concerned court was in existence in the year in which suffering has been claimed.
c) Copy of proclamation/announcement of award on the absconder.
d) Abstracts from Absconders Register.
e) Whether any action was taken to attach forfeit your property for non appearance and if so copy of order/decree.
f) Copy of the order of Civil Judge, executing the decree.
g) Whether there is any contemporary CID report etc.
h) What was the final outcome of the court case."

This letter (Annexure PF) further clarifies that in the absence of these documents, the application of the petitioner supported by the Personal Knowledge Certificates from known freedom fighters, namely S/Sh. Thakur Dass, Sita Ram and Badri Singh were insufficient to establish his claim. It concludes by saying that the Government of India is still ready to reconsider the case of the petitioner in

case he could produce one or more of the documents mentioned in clauses (a) to (h) above.

I have heard the learned counsel for the parties and have gone through the records. The Union of India, respondent No. 1, has submitted (vide Annexure PF) that "on receipt of the application of the petitioner for grant of S.S.S.Pension, this Respondent took up this matter with State Govt. vide letter dated 10.01.1996 and requested them to send verification-cum-entitlement to pension report. In response to the above letter, the State Govt. intimated vide their letter dated 07.02.1997 that case of the petitioner is being investigated through the Deputy Commissioner, Solan and the same will be sent as and when it is received. In the meantime, the petitioner filed CWP No. 382/2001 in the Hon'ble High Court of Himachal Pradesh at Shimla claiming for grant of S.S.S.Pension. This Respondent again took up this case with State Govt. vide letter dated 24.07.2001 (Annexure R/2). In response, the State Govt. vide their letter dated 02.08.2001 intimated to this Respondent that in the absence of official documentary evidence, the underground suffering and taking part in Parja Mandal activities by the petitioner, they are unable to recommend the case of the petitioner for grant of

S.S.S.Pension (Annexure R/3).” This averment has been made on affidavit.

It is indeed strange that the State Government which has already recognized the petitioner as a freedom fighter who has undergone suffering for the merger of Kunihar State with the Union of India, now adopts a stand that the petitioner could not be classed as a freedom fighter. From where such an interpretation has been adopted, remains unclear. Rather, it seems that the Union of India is at cross purposes with the State. Surely, the State of Himachal Pradesh, which has granted pension and recognized the contribution made by the petitioner to the cause of the freedom struggle by honouring him with the grant of pension, cannot adopt a stand that the petitioner is not a freedom fighter or that his claim is fake. The suffering so recognized by respondent No. 2 is none other than that the petitioner having remained underground from 1945 to 1947, when he was under threat of arrest. The reasoning adopted by the Union of India, respondent No. 1 cannot be justified or sustained. The letter (Annexure R-3) only states that the original report of Inquiry has been forwarded to the respondents. When the State has already verified the fact that the original record is not available and recognized the petitioner as Freedom Fighter, surely,

the three certificates submitted by the petitioner along with his application, interalia that of Shri Sita Ram, who was himself resident of Kunihar in Tehsil Arki and certifies that the petitioner had to remain underground from 1945 to 1947 and suffered mental, physical and financial loss, should have been sufficient. The certificates are based on the personal knowledge of freedom fighters.

The record shows that on 29th July, 1997, vide Annexure R-3, the Sub Divisional Officer, Arki had written to the Deputy Commissioner, Solan that the applicant is a freedom fighter having been so declared by the State of Himachal Pradesh who is getting pension at the rate of Rs.500/- per month. It also mentions that the present income of the applicant is Rs.8,500/- per annum, which fact has been verified by Tehsildar, Arki. The letter concludes that so far as "solid" proofs about suffering/torture are concerned, three Freedom Fighters have issued certificates in his favour and amongst them only one Shri Badri Singh was the resident of Sub Division, Arki, but he is dead. The other two Freedom Fighters, namely, Shri Thakur Dass and Sita Ram belong to Tehsil Kasauli and Sub Tehsil Krishan Garh, where these facts could be verified. By another communication dated 6th

January, 2001 (Annexure R-3), the Under Secretary (General Administration), Government of Himachal Pradesh has written to the Under Secretary, Govt.of India, Ministry of Home Affairs that it is not possible to give clear-cut recommendation in the absence of any government record in regard to the sufferings faced by the applicant during Praja Movement. The letter concludes, "that in the case of the applicant, the matter may be disposed of on the basis of documents submitted by applicant and Deputy Commissioner, Solan and the applicant and Government may also be intimated all out the action taken in regard."

To say the least, the approach of respondent No. 2 is neither proper nor legal. After lapse of such a long period, it is not possible to trace original records. Moreover, respondent No.2 having declared the petitioner to be a freedom fighter, cannot now say that the petitioner is not a freedom fighter. A person living on a meager income of Rs.8500/- per year, in the dusk of his life had approached the respondents for being accorded the honour and the token grant but instead, he found himself being pushed from pillar to post. In the Scheme itself, (which fact is reproduced in the letter of rejection Annexure PF), it has been mentioned that in the absence of formal proof, the case is to be considered on the basis of the proof

supplied by the other freedom fighters. There is not even a word in the reply which has been filed by the respondents to show that the three certificates which the petitioner had appended are not germane or acceptable.

Learned counsel appearing for the petitioner submits that there are number of decisions on the basis of which this Court has held that certification of the sufferings by other freedom fighters is sufficient proof and that it can be made the basis for being granted Freedom Fighters' Pension under the 1980 Scheme. Learned counsel has placed reliance on *CWP No.310 of 2001, Titled: Anant Ram vs. Union of India & Others, decided on 20.12.2006*, which has considered the other decisions of this Court on the issue including the acceptance of certificates from other freedom fighters as proof of suffering. No decision to the contrary has been cited before me. There is merit in the submissions made by the learned counsel appearing for the petitioner.

From the pleadings and the record, I am satisfied that the petitioner had submitted ample proof to the respondents of his suffering in the freedom struggle. The certificates had to be considered and a decision given thereon. This exercise not having been undertaken, the rejection of the case of the petitioner is unconstitutional

and cannot be sustained. Annexure PF is, therefore, quashed and set aside. A direction is issued to the respondents to dispose of the entire case of the petitioner within a period of eight weeks from today. No insistence will be made for production of original records by the petitioner when it has been certified by respondent No. 2 that it is not possible to obtain such record. The writ petition is allowed in terms as aforesaid. There shall be no order as to costs. Needless to say that the consideration of the case of the petitioner will be strictly in accordance with the judgments passed by this Court, more especially in CWP 310 of 2001.

March 15, 2007. **(Dev Darshan Sud)**
PC/aks **Judge.**